



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 03916-99

2 February 2000

SSGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Staff Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by Headquarters Marine Corps, dated 2 November 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. The Board noted that the service record page 11 in question also includes a 26 May 1996 counter entry to the contested entry, reflecting that on 29 April 1996 the Onslow District Court found you not guilty of the subject DWI (driving while intoxicated). They particularly noted your acquittal in court did not establish that an alcohol related incident did not occur. They found the failure to specify which level of substance abuse treatment you entered, and whether you were successful in completing the program, was not a material error warranting corrective action. Therefore, they did not accept the recommendation, in paragraph 4.a of the advisory opinion, to delete the portion of the entry referring to such treatment. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this

regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

3916-99

IN REPLY REFER TO:

1070
MI
2 NOV 1999

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF STAFF SERGEANT [REDACTED]
[REDACTED] USMC

1. We reviewed Staff Sergeant [REDACTED]'s application concerning his request for removal of the Administrative Remarks page 11b entry dated 950927 from his service record.
2. MCO P1070.12H, Marine Corps Individual Records Administration Manual (IRAM), authorizes commanders to make entries on page 11 which are considered matters forming an essential and permanent part of a Marine's military history, which are not recorded elsewhere in the Service Record Book (SRB) or the Marine's automated record and will be useful to future commanders.
3. The following comments concerning the page 11 entry dated 950927 are provided:
 - a. The instructions contained in paragraph 4012.3y of the IRAM requires the commander to refer to MCO P5300.12, The Marine Corps Substance Abuse Program.
 - b. Paragraph 1201 of MCO P5300.12 states in part: "Any action taken by a commander in response to an incident of alcohol abuse is reactive in nature. The objectives of the Reactive Phase are to: Confirm an incident of alcohol abuse has occurred; Take appropriate disciplinary, judicial, or administrative action if a violation of the UCMJ has occurred or if the incident involved misconduct or substandard performance of duty."
 - c. Paragraph 1204 of MCO P5300.12 states "Any alcohol-related misconduct or unsatisfactory performance will be subject to prompt and appropriate administrative action. 'Alcohol-related' means any incident where it is determined that the consumption of alcohol was a contributor. All incidents of alcohol abuse will be the subject of formal command counseling with the Marine involved. Commanders may direct an OQR/SRB entry be made after counseling a Marine for a first alcohol-related incident."

Subj: BCNR APPLICATION IN THE CASE OF STAFF SERGEANT [REDACTED]
[REDACTED] USMC

d. Paragraph 4012.3y of the IRAM authorizes "Commanders to direct a SRB entry be made after counseling a Marine for a first or subsequent alcohol-related incident." Formal counseling was effected by the Commanding Officer through the use of the Administrative Remarks page 11 of the Service Record Book.

e. The counseling entry meets the elements of a proper page 11 counseling in that it lists specific deficiencies and recommendations for corrective action, as well as where assistance can be found. Staff Sergeant [REDACTED] acknowledged the counseling entry by his signature, however, it is noted that he did not indicate whether or not he desired to make a statement in rebuttal.

f. Staff Sergeant [REDACTED] states that the entry is "substantively inaccurate and unjust" in that he was "found not guilty of Driving While Intoxicated", is irrelevant in this case. The incident for which the page 11 entry was made still occurred as supported by enclosure (2) of his BCNR application.

4. In view of the above, it is recommended that:

a. The BCNR direct that the Administrative Remarks page 11b entry be corrected by the 'pen change method of correction' per current instructions contained in the IRAM, deleting "Date seen by Substance Abuse Control Officer, 31Aug95. Assigned to/completed Level I/II/III treatment program and completion was successful/unsuccessful."

b. Staff Sergeant [REDACTED]'s request for removal of the Administrative Remarks page 11b counseling entry dated 950927 be disapproved.

5. Point of contact is [REDACTED] at [REDACTED]

[REDACTED]
By direction